

8/17

~~SECRET~~**SUBMISSION OF BERLIN TO UN ON GROUND OF VIOLATION
OF HUMAN RIGHTS****Problem:**

The Interdepartmental Coordinating Group on Germany and Berlin (ICG) suggested that IO check into the advisability of submitting the Berlin issue to the UN at this time in terms of violation of human rights. The aim would be to gain propaganda advantages from UN airing of repression on the Soviet zone border.

Conclusion:

It is not desirable to bring the Berlin issue to the UN at this time and in the context of violation of human rights because (a) the border closing does not constitute a violation flagrant enough to mobilize world opinion behind our cause and (b) this course would open the Berlin problem to UN debate and seize the UN of the Berlin issue at an inappropriate time.

Discussion:

The border closing is a legal infringement of the four-power agreement of 1949, but few outside of western Europe would construe this action as a violation of "human rights" as normally interpreted (genocide and corpses). The precedents of Tibet and Angola would be technically applicable to Berlin, but it is not clear that the balance of advantage lies in raising the issue of Berlin at this time and in this context. So far there is no firm evidence of bloodshed and repressive actions beyond the border closing. The situation would, of course, be dramatically changed if this happened. Then it might become tactically desirable to bring the issue before the UN.

Even if we attempted to seize the UN of the current Berlin situation as a human rights question, the debate would inevitably snow-ball into broad
consideration

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~~SECRET~~

-2-

consideration of the totality of the Berlin question. We would have to be prepared to expand our case from one based on human rights violation to one based on a threat to peace. This is particularly true if we take the matter to the SC which is the preferable forum in view of its composition and size. Thus, the decision of whether and when to bring Berlin to the UN ought to be taken on broader grounds, since it is inevitable that whatever the initial ground for seizing the UN of this issue it will be debated as the "Question of Berlin."

Would it be to the advantage of the US to seize the UN of the Berlin question at this time and in this context?

The advantages would be:

- a. The issue would be initially focussed on repressive Soviet bloc actions and on a clear violation of the 1949 Four-power agreement on free movement.
- b. The issue would be joined on our initiative and our terms rather than on the initiative and terms of the neutrals (Belgrade) or impatient friends (Argentina). If we conclude that the UN will inevitably become involved, we should consider whether this is not the best occasion.
- c. Timing is all-important and we would be taking advantage of the more favorable atmosphere created by the adverse reaction to the Soviet closing of the border to present our case to the world.

These advantages, however, appear to be more than offset by the following disadvantages:

- a. What we prefer to treat as a quadripartite issue, not involving middle or neutralist powers, will be transformed into a world issue

~~SECRET~~

-3-

- in which there will be pressures for peace at any price and for accommodation along lines of a formula not to our advantage.
- b. Appealing to the UN on the border closing would constitute a major diplomatic response to a peripheral aspect of basic Allied rights in Berlin.
 - c. It would be contrary to our present plan to seek an accommodation with the USSR through negotiation before injecting the UN into the problem.
 - d. Debating the Berlin issue on grounds of human rights would inevitably open Pandora's box of colonialism, once again put the US and NATO on the spot on colonialist issues, especially in view of the French position on Djazira, and tend to sharpen differences we prefer to leave ambiguous.
 - e. It is not clear that the Afro-Asians will regard the action of the GDR in closing the border and the Soviet posture as constituting flagrant violations of human rights. They are not likely to get excited about the denial of freedom of exit and access, in view of parallels in other closed societies.
 - f. There is no evidence that bringing the Berlin issue to the UN as a question of human rights and self-determination would increase public pressure on the Soviets. It might dramatize Communist oppression but the effect on the Afro-Asians should not be overestimated. Most of them are convinced that the West gets excited about human rights only where whites are the victims.

4

~~SECRET~~

-4-

If we wanted to discuss the Berlin problem essentially on the grounds of a violation of human rights, the SC would not be a proper forum. Moreover, if we tried to build a case primarily on the human rights approach, we are not likely to get an adequate or satisfactory response in terms of building support among neutrals for our position on Berlin. The SC could be used primarily as a propaganda forum.

However, if as would be necessary, we argue our case on the basis of a threat to peace, failure to seek or obtain Security Council action on our complaint (without a follow-through in an emergency General Assembly) would reveal that we were using the Council only for propaganda purposes. This course might also be construed as evidence that the UN is unable to contribute significantly to the solution of the Berlin problem and impair effectiveness of recourse to the UN at a later date.

We should, therefore, reserve the UN for a strategically more appropriate occasion when the more crucial aspects of the Berlin problem are engaged. The timing of UN action, perhaps in relation to our forthcoming appeal for negotiation, should be determined by (a) the totality of our strategy on Berlin and (b) our tactical ability to control undesirable initiatives by others.

Recommendations:

- (1) Apart from the possibility that the situation may be transformed by dramatic repressive action (as noted above) it might be advisable to announce our willingness to have the legal issue involved in implementation of the 1949 agreement discussed by the ICJ. As a political matter this could only be

4

~~SECRET~~

-5-

done by having the SC or GA vote a resolution requesting an advisory opinion.

(2) We should request the UN to circulate to members the US-British-French notes to the Soviet commandant and to Moscow protesting the East German border closing. This would give further publicity to our case and constitute recognition of the interest of other countries in the Berlin situation without engaging the UN formally in the matter.

should

(3) We/request allies and friends to include appropriate references to the Berlin problem in their general remarks at the opening of the 16th GA.

Clearances: L/EUR - Mr. Kearney
Mr. Schaubel

EUR - Mr. Kohler
Mr. Brandon

IO - Mr. Wallace

IO:UNP:NAFolseovits;als 8/17/61

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